



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33401016

Date: AUG. 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a musician, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner stated that she accomplished numerous achievements in her field of expertise which have been recognized on both a national and international level. Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied five of these criteria, summarized below:

- (i), documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii), membership in associations that require outstanding achievements
- (iii), published material about the individual in professional or major media
- (v), original contributions of major significance
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation

The Director concluded she did not meet any of the claimed criteria and the Petitioner maintains on appeal that she meets the five claimed criteria. On appeal, the Petitioner also asserts the Director made numerous factual errors and referenced unrelated cases, which deprived her of a fair opportunity to contest the decision. She specifically states that the “repetitive and generic nature of the decision, which mirrors language used in other unrelated cases, suggests a lack of individualized assessment and a failure to provide a fair and thorough adjudication.” The record supports the Petitioner’s claims. Upon review, for the reasons discussed below, we find that the Director’s decision did not adequately address all the claimed evidentiary criteria or analyze the evidence provided and did not fully explain the reasons the petition was denied.

For example, in the denial’s analysis of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) for memberships, the Director misstates the Petitioner’s membership credentials as if she were part of the medical and radiology fields and discusses evidence not in the record when stating that the membership required her medical degree, evidence that she was a certified radiologist, and engaged in the active practice of neuroradiology. The Petitioner correctly notes that this information does not correspond to her documents regarding membership in organizations for the arts as a musician. While the Director does partially analyze the Petitioner’s evidence at other points, this portion of the decision appears to reflect the contents of a different record of proceeding.

In the denial’s analysis of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) regarding published material about the Petitioner, the Director instead outlines the requirements necessary to establish the criterion for membership. In addition, the Director does not address the evidence the Petitioner submitted in

support of this criterion with any specificity and instead summarily concluded that the evidence was insufficient.

In the denial's analysis of the criterion at 8 C.F.R. § 204.5(h)(3)(v) regarding original contributions, the Director instead outlined the requirements for the criterion for judging. In addition, the Director stated that the Petitioner should show, in part, she was invited to "referee or judge a fight." Again, the Petitioner is a musician and did not present any evidence of acting as a referee or judge for a fight.

Finally, although the Petitioner claimed the criterion under 8 C.F.R. § 204.5(h)(3)(v), the Director failed to discuss it in the denial decision. On appeal, the Petitioner also noted several misstatements and factual errors in the Director's request for evidence.

The Director's decision did not address the evidence the Petitioner submitted with specificity and improperly dismissed evidence without proper explanation. In addition, the factual errors show the Director's decision was based on evidence not in the record of these proceedings. When denying a petition, an officer shall explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). An officer must fully explain the reasons for denial to allow the petitioner a fair opportunity to contest the decision and our opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's errors deprived the Petitioner of a fair opportunity to appeal the denial and inhibit our ability to meaningfully review the denial on appeal.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. In doing so, the Director should also review the Petitioner's appellate brief, which further addresses the previously submitted evidence.

As the Director did not conclude that the Petitioner met the initial evidence requirements, the decision did not include a final merits determination. If after review the Director determines that the Petitioner received a major, internationally recognized award or satisfied at least three criteria at 8 C.F.R. 204.5(h)(3), the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.